



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R01-OAR-2020-0209; FRL-10022-62-Region-1]

Air Plan Approval; New Hampshire; Sulfur Content Limitations for Fuels

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the State of New Hampshire on March 11, 2019. This revision establishes sulfur content limitations for fuels. In addition, the State requested withdrawal from the SIP of the existing sulfur limitations regulation, which will be superseded by the State's revised sulfur limitations regulation. The intended effect of this action is to approve the State's March 11, 2019 submittal into the New Hampshire SIP and remove from the SIP the superseded sulfur in fuels limitations. This action is being taken under the Clean Air Act.

DATES: This rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R01-OAR-2020-0209. All documents in the docket are listed on the <https://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available at <https://www.regulations.gov> or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square - Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact

listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office’s official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays and facility closures due to COVID-19.

FOR FURTHER INFORMATION CONTACT: Anne McWilliams, Air Quality Branch, U.S. Environmental Protection Agency, EPA Region 1, 5 Post Office Square – Suite 100, (Mail code 05-2), Boston, MA 02109-3912, tel. (617) 918-1697, email mcwilliams.anne@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

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I. Background and Purpose

New Hampshire’s Env-A 400 Sulfur Content Limits of Fuels (Env-A 400) was approved by EPA as a revision to the New Hampshire SIP on August 14, 1992 (57 FR 36603). Env-A 400 was subsequently renumbered by the State as Env-A 1600 Fuel Specifications (Env-A 1600). Env-A 1600 was submitted to EPA as a revision to the SIP in 2003 with a subsequent amendment submitted in 2015. However, New Hampshire withdrew both submittals prior to EPA action. Effective July 1, 2018, New Hampshire’s Revised Statutes Annotated (RSA) 125-C:10-d was amended to reduce the sulfur limits in liquid fuels imported into or distributed within the State. The State’s March 11, 2019 SIP submittal of revised Env-A 1600 Fuel Specifications implements the State statute, (RSA) 125-C:10-d as amended.

Env-A 1600 is intended to prevent, abate, and control the use of fuels containing specific pollutant elements and compounds. In conjunction with the submittal of Env-A 1600, on May 22, 2019, the New Hampshire Department of Environmental Services (NH DES) requested removal of Env-A 400, which currently exists in the New Hampshire SIP but has been superseded as a matter of State law by Env-A 1600. Env-A 400 is now a State regulation unrelated to sulfur limitations in fuels. Other specific requirements of New Hampshire's sulfur in fuels requirements and the rationale for EPA's proposed action are explained in the notice of proposed rulemaking (NPRM) (86 FR 8566, February 8, 2021) and will not be restated here.

II. Response to Comments

During the comment period, two commenters expressed support for EPA's proposed rulemaking. One additional commenter provided comments that were unclear as to how the comments related to EPA's proposed approval and did not include any discussion of how the proposed rulemaking should change in any way. In closing, this commenter expressed overall support for the proposed rulemaking.

III. Final Action

EPA is approving Env-A 1600, Fuel Specifications, which was submitted to EPA by New Hampshire on March 11, 2019 as a revision to the New Hampshire SIP. In addition, EPA is removing previously SIP approved Env-A 400, Sulfur Content of Fuels, which has been superseded by Env-A 1600 as a matter of State law. Our proposed rulemaking included a demonstration that removal from the SIP of Env-A 400 meets the anti-backsliding requirements of CAA section 110(l).

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the New Hampshire Env-A 1600 “Fuel Specifications” described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these documents generally available through <https://www.regulations.gov> and at the EPA Region 1 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA’s approval, and will be incorporated by reference in the next update to the SIP compilation.¹

Also in this rule, in accordance with the requirements of 1 CFR part 51, EPA is finalizing the removal of provisions of the Env-A 400 “Sulfur Content Limits in Fuels” from the New Hampshire State Implementation Plan, as described in the amendments to 40 CFR part 52 set forth below.

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

¹ 62 FR 27968 (May 22, 1997).

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct

costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: April 19, 2021.

Deborah Szaro,
Acting Regional Administrator,
EPA Region 1.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart EE – New Hampshire

2. In § 52.1520(c), amend the table by removing the entry “Env-A 400” and adding the entry “Env-A 1600” in numerical order to read as follows:

§ 52.1520 Identification of plan.

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(c) * * *

EPA-Approved New Hampshire Regulations

State citation	Title/subject	State effective date	EPA approval date	Explanations
**	*	*	*	**
Env-A 1600	Fuel Specifications	12/21/2018	[Insert date of publication in the Federal Register] [Insert Federal Register citation]	Env-1600 replaces the previously approved Env-400 Sulfur Content Limits in Fuels
**	*	*	*	**

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[FR Doc. 2021-08376 Filed: 4/23/2021 8:45 am; Publication Date: 4/26/2021]